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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,604

09/29/2005

Robert William Holmes

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EXAMINER

KASSA, TIGABU

ART UNIT

PAPER NUMBER

1619

MAIL DATE

DELIVERY MODE

08/11/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/521,604</p>	<p>Applicant(s) HOLMES ET AL.</p>	
	<p>Examiner TIGABU KASSA</p>	<p>Art Unit 1619</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See continuation sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 1-11.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Mina Haghighatian/
Primary Examiner, Art Unit 1616

Continuation of 5 and 11. Applicants' proposed claim amendments do not place the case in condition for allowance or in better condition for appeal. However, since claim amendments overcome some of the rejections, the amendments will be entered. Applicants traversed the rejections of claims 1-11.

Claims 1, 3-8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Sorensen et al. (WO 01/05232). Applicants traversed this rejection on the grounds that Sorensen et al. do not teach or suggest the use of levamisole in combination with an avermectin or milbemycin in the absence of benzimidazole and lactic acid. The examiner respectfully disagrees with this assertion because the claim language recites the phrase "comprising". Even though applicants use the phrase "consists of" for reciting the two actives, the phrase "comprising" at the beginning of the claim, controls claim interpretation. The transitional term "comprising", is inclusive or open-ended and does not exclude additional, un-recited elements or method steps. See, e.g., *Mars Inc. v. H.J. Heinz Co.*, 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004) (see MPEP 2111.03). Therefore, the claim language does not exclude the incorporation of benzimidazole and lactic acid in the formulation. Additionally, Sorensen et al. clearly disclose a stable veterinary composition suitable for pour on or oral use as anthelmintic where a benzimidazole is carried in lactic acid, where preferably a co-solvent is present and that co-solvent is preferably N-methyl-2-pyrrolidone (page 3, lines 29). Sorensen et al. clearly disclose an illustrative example of a composition comprising abamectin (0.10% w/v), levamisole HCl (3.75% w/v), triclabendazole (0.5% w/v) and other ingredients (page 7, lines 7-15). Sorensen et al. also disclose using the co-solvent such as N-methyl-2-pyrrolidone greatly increased the potential loading of the benzimidazole triclabendazole, which is anthelmintic agent (page 8, lines 5-7). These teachings clearly destroy the novelties of claims 1, 3-8, and 10.

As a result of maintaining the rejections of claims 1, 3-8, and 10 under 35 U.S.C. 102(b) as being anticipated by Sorensen et al. (WO 01/05232) the following rejections under 35 U.S.C. 103(a) are also maintained for reasons of record in the previous action:

The rejection of claim 2 under 35 U.S.C. 103(a) as being unpatentable over Sorensen et al. (WO 01/05232) as applied to claims 1, 3-8, and 10 above, and further in view of Huet et al. (US Patent No 6,426,333) and Harvey (US Patent No 6,165,987) is maintained.

The rejection of claim 9 under 35 U.S.C. 103(a) as being unpatentable over Sorensen et al. (WO 01/05232) as applied to claims 1, 3-8, and 10 above, and further in view of Komer (US Patent No 5,773,422) is maintained.

The rejection of claim 11 under 35 U.S.C. 103(a) as being unpatentable over Sorensen et al. (WO 01/05232) as applied to claims 1, 3-8, and 10 above, and further in view of Harvey (US Patent No 6,165,987, IDS reference) is maintained.

Withdrawn Rejections:

Applicant's amendments and arguments filed on 08/03/09 are acknowledged and have been fully considered. The rejection of claim 11 under 35 U.S.C. 112, first paragraph, claims 1-11 under 35 U.S.C. 112, second paragraph, and claims 1, 3-5, and 7-10 under 35 U.S.C. 102(b) as being anticipated by Komer (US Patent 5773422) are hereby withdrawn as a result of applicants claim amendments.

Furthermore, the rejection of claims 1, 2, 6, and 11 under 35 U.S.C. 103(a) as being unpatentable over Komer in view of Huet et al. (US Patent 6426233), Harvey (US Patent 6165987), and Harvey (GB Patent application 2252730) respectively are hereby withdrawn as per applicants claim amendments.